the defendant appealed. *Held,* that the judgment was correct, as the payee of this promissory note was a holder in due course. *Johnston v. Knipe* (1918, Pa.) 103 Atl. 957.

That a payee might be a holder in due course at common law was undoubted. Whether he may still be such under the N. I. L. depends on whether sec. 30 (original notation) is held by its enumeration to exclude every other form of negotiation, such as, *e. g.,* that to a payee. Here, as in other connections, the saner and sounder result seems to be obtained by regarding the N. I. L. not as a codification intended to be exhaustive, but as legislation which left the common law in force in *all* points not fairly covered by the language of the statute. See Comments (1918) 27 YALE LAW JOURNAL, 686. The instant case applies this salutary principle. There is not over-much authority on the precise point. See (1915) 24 YALE LAW JOURNAL, 429, and (1918) 27 *ibid.* 558.

CONTRACTS—DEFENSES—EPIDEMIC OF INFANTILE PARALYSIS EXCUSING NON-PERFORMANCE.—The plaintiffs agreed to manage and provide prizes for a baby show at Charter Oak Park in Hartford on September 6, 1916. The defendant promised to supply a room for the show and to pay the plaintiffs $600. About the middle of August the defendant notified the plaintiffs that it wished to cancel the contract because of an epidemic of infantile paralysis which would make it dangerous to health to hold the baby show at the time proposed. To an answer setting up these facts the plaintiffs demurred. *Held,* that the defense was good, since the holding of the proposed show under the circumstances would, as matter of law, be contrary to public policy, and therefore the abandonment of it upon such contingency was an implied term of the contract. Two judges *dissenting. Hanford et al. v. Connecticut Fair Ass'n* (1918) 92 Conn. 621, 103 Atl. 838.

The dissenting judges in a very persuasive opinion combat the broad principle that whenever an otherwise lawful act becomes dangerous to public health because of an external temporary condition it automatically becomes contrary to public policy and therefore unlawful, without any statute or order from health officials declaring it to be so.

CONSTITUTIONAL LAW—INDIANA PROHIBITION LAW VALID.—The Prohibition Law of Indiana (Acts 1917, ch. 4) prohibits the manufacture, sale, gift, advertisement or transportation of intoxicating liquor except for certain specified purposes. The plaintiffs, brewers, sought an injunction to restrain the superintendent of police of an Indiana city from enforcing the law, on the ground that it violated the state constitution. *Held,* that the law was a valid exercise of the police power. Spencer, J., *dissenting. Schmitt v. F. W. Cook Brewing Co.* (1918, Ind.) 120 N. E. 19.

This case is of interest for the reason that almost alone among the authorities stands the case of *Beebe v. State* (1855) 6 Ind. 501, holding that the state legislature had no power to prohibit the manufacture and sale of intoxicating liquors. The principal case overrules that decision. Mr. Justice Spencer dissented not merely on the ground of *stare decisis* but upon what he believed to be sound constitutional principles.

COURTS—CIRCUIT COURT OF APPEALS—FOLLOWING PRECEDENTS FROM OTHER CIRCUIT COURTS.—The state of Arkansas imposed an annual tax on a railroad company for the privilege of exercising its franchise within the state, making the tax a first lien on the property of the corporation, whether in its own hands or

those of an assignee, receiver, etc. Receivers were appointed in a creditors' suit. The state intervened, praying that the receivers be ordered to pay the franchise taxes for the years since their appointment, with the penalties for non-payment. From such an order the receivers appealed. *Held,* that the order was correct, the court following a decision by the Circuit Court of Appeals of another Circuit decreeing payment of the taxes and penalties. *Bright v. State of Arkansas* (1918, C. C. A. 8th) 249 Fed. 950.

In view of the conflict of authority on the point at issue, the court followed by preference a decision of the Circuit Court of Appeals of the Ninth Circuit. Its sane pronouncement on such action is worthy of note. "In deciding questions of policy and practice which involve no vital moral issue, certainty in the law and uniformity of decision are often more essential to the wise administration of justice and to the interests of business men than a particular policy or practice. Where the correct decision of such a question is doubtful, and one of the United States Circuit Courts of Appeals has decided it in a considered opinion, it is the duty of the others to follow that decision, unless it clearly appears to them, or to some of them, to be unfair or unwise, and it is the duty of the courts at all times, in the consideration of such issues, to lean towards uniformity of decision and practice."

COURTS-MARTIAL—PERSONS SUBJECT TO MILITARY LAW—COOK UPON ARMY TRANSPORT.—The petitioner, a civilian, was employed in time of war by the U. S. Quartermaster's Department and was assigned as cook upon an army transport lying at the Bush Terminal, Brooklyn. Just before the ship was to sail he attempted to desert, was arrested by military police and held for trial by court-martial. He petitioned for a writ of *habeas corpus. Held,* that he was "a person serving with the armies of the United States in the field" and therefore was subject to military law and to trial by court-martial. *Ex parte Falls* (1918, D. N. J.) 251 Fed. 415.

In holding that service "in the field" may be performed at any place, whether on land or on water, where such service is required for the good of the regular army, the court gives a liberal but sensible interpretation to section 2 of the Articles of War. The decision finds support in *Ex parte Gerlack* (1917, S. D. N. Y.) 247 Fed. 616, noted in (1918) 27 YALE LAW JOURNAL, 968.

GARNISHMENT—EFFECT OF GOVERNMENTAL CONTROL OF RAILROADS FOR WAR PURPOSES.—In an action against the Pennsylvania Railroad Company certain other railroads were summoned on January 29, 1918, as garnishees. Prior thereto all the companies had been taken under federal control pursuant to the President's Proclamation of December 26, 1917. The garnishees admitted traffic balances owing to the Pennsylvania but contended that they could not be subjected to garnishment because of that provision of the Proclamation which declared that "except with the prior written consent of [the Director General], no attachment by mesne process or on execution shall be levied on or against any of the property used by any of said transportation systems in the conduct of their business as common carriers. . . " *Held,* that such traffic balances were not subject to garnishment. *Dooley v. Pennsylvania Railroad Co. et al.* (1918, D. Minn.) 250 Fed. 142.

The legality of the above quoted provision of the President's Proclamation was questioned in a *dictum* in *Muir v. Louisville & N. R. R. Co.* (1918, W. D. Ky.) 247 Fed. 888, 896. The principal case sustains it as incidental to the general power to take possession of the railroads conferred upon the President